

KEY: Yellow highlighted text below represents language proposed to be re-inserted in response to public comment. Red font underlined text below represents new language proposed in response to public comment. Red font strike through text below represents language proposed to be deleted in response to public comment.

12.9.1301 COMMITMENT TO PRESERVATION OF THE GRAY WOLF AS RESIDENT WILDLIFE IN NEED OF MANAGEMENT (1) The department has management authority of the gray wolf, a resident native wildlife species, and is dedicated to the conservation of wolf populations within the state of Montana. Pursuant to the definition of management under the Nongame and Endangered Species Conservation Act, 87-5-102, MCA, the department will implement conservation and management strategies to make sure that wolves continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department will manage wolves to assure-ensure that recovery criteria are met or exceeded. Montana will ensure maintenance of at least 15 breeding pairs and assist natural dispersal and connectivity between gray wolf populations in Canada, Montana, Idaho, and Wyoming. The department uses an adaptive management framework for the gray wolf, meaning that if the statewide number of wolves exceeds 15 breeding pairs, the department may, as outlined in these rules, approve lethal control of wolves. If there are fewer than 15 breeding pairs, the department will allow only conservative management of the wolf populations so that the number of breeding pairs does not go below 10 but may still approve lethal control. These rules set out the comprehensive structure governing control of the gray wolf so that all control actions fall within the department's adaptive management considerations. The commission has authority, when the statewide number of wolves exceeds 15 breeding pairs, to adopt a hunting harvest season with ~~quotas~~ for wolves and will exercise that authority as part of the adaptive management framework for the gray wolf. The department's management decisions will be guided by the principles of maintaining and enhancing Montana's contribution to the overall northern Rocky Mountain gray wolf population and the gray wolf's connectivity between contiguous populations in Canada, Idaho, Montana, and Wyoming.

~~(2) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1302 DEFINITIONS The following definitions apply to this subchapter:

(1) "Adaptive management" means wolf conservation and management strategies that will maintain a recovered population and assure natural connectivity and genetic exchange among the wolf populations in Canada, Montana, Idaho, and Wyoming. It establishes resource objectives such as maintenance of a recovered population; it monitors progress towards meeting those objectives ~~through wolf~~

numbers, distribution, dispersal, genetic diversity, and consideration of disease; and it adjusts management decisions to meet these resource objectives. Adaptive management directs selection of more conservative or liberal management tools, accordingly. If wolf numbers, natural connectivity, or genetic exchange ever become conservation concerns, adaptive management allows the department a full range of tools to ensure a recovered and connected population, including more conservative lethal control, smaller regulated harvest quotas, and human-assisted genetic exchange.

(2) "Agency" means the Department of Fish, Wildlife and Parks or another agency of government authorized by the Department of Fish, Wildlife and Parks through an interagency cooperative agreement.

(3) "Attacking" means the actual biting, wounding, or grasping of livestock or domestic dogs.

(4) "Breeding pair" means an adult male and an adult female wolf that have produced and at least two pups that survived until December 31 of the year of their birth, during the previous breeding season.

(5) "Confirms", "confirmed", or "confirmation" means an incident where the department or USDA Wildlife Services determines through a field investigation of dead or injured livestock that there is reasonable physical evidence that the animal was actually attacked and/or killed by a wolf.

~~The primary confirmation would ordinarily be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, and/or eye witness accounts of the attack may help identify the specific species or individual responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include blood spilled or sprayed at a nearby attack site or other evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on the animal that has been largely consumed.~~

(6) "Habituated" means readily visible in close proximity to people or structures on a regular basis; not threatened by close proximity and may even be attracted to human presence or human food sources; extremely rare behavior in wild wolves, but typical behavior for released captive wolf or wolf-dog hybrid; for wolves, may or may not involve food conditioning.

(7) "Intentional harassment" means the deliberate and preplanned harassment of a wolf by less than lethal munitions, including but not limited to, 12 gauge shot gun rubber bullets and bean bag shells, that are designed to cause physical discomfort and temporary physical injury but not death. Intentional harassment may also include other devices intended to make noise such as 12 gauge shot gun cracker shells, RAGG boxes, propane cannons, or sirens.

(8) "Lethal control" means killing a wolf except for hunting or trapping by the public as authorized by the commission as part of a regulated public harvest.

(9) "Livestock" means bison as defined in 81-1-101, MCA, cattle, calf, hog, pig, horse, mule, sheep, lamb, llama, goat, herding or guarding animals, rhea, emu, ostrich, donkey, and certain breeds of dogs commonly used for herding or guarding livestock.

(10) "Nonlethal control" means actions intended to decrease the risk of conflict that does not injure or kill a wolf.

(11) "Opportunistic hazing in a noninjurious manner" means harassment, without the conduct of prior purposeful actions, such as yelling and radio activated noise makers, or use of firearms to scare or discourage a wolf in a way that does not injure or kill the wolf.

(12) "Problem wolf" means a wolf that has been confirmed by the department or USDA Wildlife Services to have attacked or been in the act of attacking livestock within the past 45 days.

(13) "Threatening to kill" means the actual chasing, testing, molesting, harassing of livestock or livestock herding/guarding animals that would indicate to a reasonable person that an attack was imminent.

(14) "USDA Wildlife Services" means the Wildlife Services Division of the United States Department of Agriculture, Animal and Plant Health Inspection Service.

~~(15) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1303 CONTROL METHODS OF THE GRAY WOLF INCLUDE NONLETHAL AND LETHAL MEANS (1) These rules address when and how the department may carry out nonlethal and lethal control of wolves.

(2) To undertake control actions that are consistent with this rule and the Montana Gray Wolf Conservation and Management Plan, ~~the department may:~~

(a) take control actions;

(b) pursuant to an interagency cooperative agreement, may authorize USDA Wildlife Services to undertake control actions pursuant to an interagency cooperative agreement; or

(c) pursuant to an interagency cooperative agreement, may authorize the Department of Livestock pursuant to an interagency cooperative agreement, to undertake control actions that are consistent with this rule and the Montana Gray Wolf Conservation and Management Plan.

(d) issue permits to individuals pursuant to ARM 12.9.1305.

(3) The department is responsible for any lethal control decision and for the status, conservation, and management of the gray wolf population as a state species in need of management, game animal, or a furbearer as guided by the Montana Gray Wolf Management Plan, administrative rules, and statutes.

(3) (4) Control of the gray wolf by an agency or an individual may include nonlethal and lethal actions. Specific control actions shall connect in both time and

location to a wolf or wolves with the highest likelihood of having injured or killed the livestock.— The department shall address wolf conflicts on a case-by-case basis, connecting response to the conflict in both time and location to direct nonlethal and lethal actions to a wolf or wolves with the highest likelihood of having injured or killed the livestock.

(4) ~~(5)~~ The department shall take an incremental approach to lethal control.

~~(5) (6)~~ Killing or harassing a wolf not in conformance with these rules is subject to criminal penalties pursuant to ~~87-1-102, 87-1-125, 87-5-106, and 87-5-111, 87-6-201, and 87-6-203, MCA, as applicable.~~

~~(6) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1304 ALLOWABLE NONLETHAL CONTROL OF THE GRAY WOLF

(1) Control of the gray wolf includes a variety of nonlethal management activities intended to decrease risk of, prevent, or resolve a conflict without killing the wolf in question. Allowable nonlethal control activities include, but are not limited to:

(a) husbandry practices including, but not limited to, electric fencing, increased human presence, fladry, herding or guarding animals, night pens, shed lambing, carcass removal, alternative pastures, amended pasture or grazing rotations, or supplemental feed;

(b) placement of a radio collar to facilitate increased monitoring of the pack;

(c) opportunistic hazing in a noninjurious manner;

(d) intentional harassment;

(e) department discouraging wolves from denning in a particular location;

(f) carcass removal or electric fencing of bone yards (e.g., localized livestock disposal sites which attract a variety of scavengers); and

(g) working with interested individual livestock owners and private landowners, watershed groups, interested groups, state and federal land managing agencies, USDA Wildlife Services, and the Montana Livestock Loss Reduction and Mitigation Board and its coordinator to provide technical assistance and to assist with selection and implementation of proactive nonlethal controls on both public and private lands when and where livestock are present, either seasonally or yearlong. Examples include: allotment management or annual operating plans; Wildlife Management Area or other state land grazing leases; and, predator deterrent programs offered through the United States Department of Agriculture Natural Resource and Conservation Service Environmental Quality Incentive Program.

(2) The department will also work with others to better understand the effectiveness of nonlethal activities to prevent or decrease the likelihood of wolf-livestock conflicts.

~~(3) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1305 ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF

~~(1) On a case-by-case basis, the commission delegates its authority to the department to may authorize lethal control of problem wolves. only the department may authorize the following to conduct lethal control of problem wolves:~~

~~(a) agency control by the department,~~

~~(b) USDA Wildlife Services, or the Department of Livestock pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response; or~~

~~(c) Department of Livestock pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response.~~

~~(b) (d) control by a livestock owner, immediate family member, or employee, or other person authorized by the department with a permit issued by the department under the conditions authorized and specified on the permit; and~~

~~(e) (e) control to protect human safety, and~~

~~(f) control pursuant to 87-1-901, MCA.~~

(2) The department may authorize lethal control of a problem wolf, after considering the number of breeding pairs within the state and other factors in these rules.

(3) Before considering lethal control of a problem wolf for livestock conflict, the department or USDA Wildlife Services shall conduct the following investigation:

(a) the department or USDA Wildlife Services will conduct a field investigation to determine if the death of the livestock was due to natural causes or a predator; and

(b) if a predator killed the livestock, the department or USDA Wildlife Services will examine the evidence at the scene to determine if a wolf was responsible.

~~(4) If the department or USDA Wildlife Services confirms that a wolf killed the livestock, the department will consider input from USDA Wildlife Services and the livestock owner and decide the best course of action. The department may authorize incremental lethal control for problem wolves for up to 45 days from the date of confirmation by USDA Wildlife Services, assessing each conflict on a case-by-case basis and after considering the following factors:~~

~~(a) pack size and pack history of conflict;~~

~~(b) livestock operation;~~

~~(c) age and class of livestock killed;~~

~~(d) location of conflict;~~

~~(e) potential for future conflict;~~

~~(f) status and distribution of prey;~~

~~(g) season;~~
~~(h) number of breeding pair within the state;~~
~~(i) effectiveness and prior use of nonlethal control; and~~
~~(j) verification that wolves are not intentionally baited or drawn to the area, wolves are routinely present, and that nonlethal tools are unlikely to prevent further incidents of injured or dead livestock.~~

~~(5)~~ (4) The department has the discretion to lethally remove or authorize removal of a gray wolf if the department determines that the wolf is:

- ~~(a) bold;~~
- ~~(b) food conditioned;~~
- ~~(c) habituated to humans or livestock;~~
- ~~(d) demonstrates demonstrating~~ abnormal behavior patterns or physical characteristics indicative of a wolf-dog hybrid or of captive origin; or
- ~~(e) if it posesposing~~ an immediate or ongoing threat to human safety.

~~(6)~~ (5) Pursuant to 87-5-109, MCA, the director of the department may permit killing, possessing, transporting, or exporting of a wolf for scientific, zoological, or educational purposes.

~~(7)~~ (6) The department may kill or remove a sick, injured, or diseased wolf.

~~(8)~~ (7) To further conservation of the species, the department may capture and translocate a wolf or use other human assisted techniques.

~~(9)~~ (8) The department may authorize a livestock owner, immediate family members, or employees by a permit to take a problem wolf under the following circumstances and conditions as part of a coordinated agency response to confirmed livestock damage due to wolves:

(a) when the department or USDA Wildlife Services confirms that a wolf killed the livestock; ~~and when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock;~~

~~(b) the department has authorized USDA Wildlife Services to implement lethal control to resolve conflict;~~

~~(c)~~ (b) when the department or USDA Wildlife Services determines that the wolf was not purposefully or intentionally fed or baited to a site;

~~(d)~~ (c) the permit may last for a maximum of 45 days from the date the department or USDA Wildlife Services confirms the wolf caused damage and any wolf killed within the 45 days will be counted towards the number specified on the permit;

~~(e)~~ (d) the permit expires when the total desired number of wolves are removed by the combined action of the department, USDA Wildlife Services, and individuals named on the permit, or at the end of the 45 days, whichever is first;

~~(f)~~ (e) within 24 hours, a person must report to the department killing or injuring a wolf under a permit;

~~(g)~~ (f) to preserve the physical evidence, the permittee shall leave the carcass of any wolf killed where it lay, and shall not disturb the area surrounding the carcass; and

~~(h)~~ (g) surrender the carcass to the department.

~~(10)~~ (9) The permit must specify:

- (a) its duration and expiration date;

(b) total number of wolves that may be lawfully killed through the combined actions of the individuals named on the permit or other department authorization and the department or USDA Wildlife Services;

(c) the geographic area where the permit is valid; and

(d) that wolves may be killed using means of take authorized by the commission for wolf harvest seasons from the ground and in a manner that does not entail the use of intentional live or dead baits, scents, or attractants or deliberate use of traps or snares, or poisons; or use of radio telemetry equipment.

~~(11)~~ (10) As allowed by ~~87-3-130~~ 87-1-901 and 87-6-106, MCA, any person may kill without permit or license a wolf that is attacking, killing, or threatening to kill a person or livestock, or that is in the act of attacking or killing a domestic dog. A person may not intentionally bait a wolf with domestic dogs or livestock for the purpose of killing the wolf.

(a) This person shall notify the department within 72 hours, preserve the scene, leave the carcass where it was killed until the department investigates the scene, and surrender the carcass to the department. USDA Wildlife Services will investigate and determine the cause of any injured or dead livestock.

(11) A landowner or landowner agent, pursuant to 87-1-901, MCA, may take a wolf on the landowner's property without permit or license when the wolf is a potential threat to human safety, livestock, or domestic dog until the quota established by the commission under 87-1-901, MCA is met.

(a) Wolves representing a potential threat to human safety, livestock or domestic dogs are those wolves in immediate proximity to human dwellings, livestock or domestic dogs. do not include wolves that might routinely use an area as free ranging wildlifeThe intent of this requirement for immediate proximity is to maximize the likelihood that wolves harvested under this authority are those wolves most likely to threaten humans, livestock or domestic dogs.-

(b) This landowner or landowner's agent shall:

(i) notify the department within 24 hours;

(ii) preserve the scene;

(iii) leave the carcass where it was killed until the department investigates the scene; and

(iv) surrender the hide, skull and carcass to the department.

(c) Any take after the quota established by the commission under 87-1-901, MCA is met is subject to criminal penalties pursuant to, 87-5-106, 87-5-111, 87-6-201, and 87-6-203, MCA, as applicable.

~~(12) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.~~

AUTH: 87-1-201, 87-1-301, 87-1-901, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA